

26-38-2.5 Temporary exemption for certain restrictions on heated tobacco.

- (1) The definition of "smoking" which prohibits heated tobacco inhaled or exhaled through a hookah does not apply to a place of public access if the place of public access meets the requirements of Subsections (2) and (3).
- (2)
 - (a) A place of public access shall certify to the department by July 1, 2012, under penalty of perjury, that it meets the requirements of Subsection (3) and should be exempt under this section.
 - (b) The department:
 - (i) shall verify that the place of public access complies with the provisions of Subsection (3) at the time of the certification under Subsection (2)(a);
 - (ii) may ask the local health department with jurisdiction over the place of public access to verify that the place of public access complies with the provisions of Subsection (3);
 - (iii) shall issue a certificate of exemption if the place of public access is found to comply with the provisions of Subsection (3);
 - (iv) may itself, or through the local health department, verify at other times that the place of public access is in compliance with the provisions of Subsection (3); and
 - (v) may in accordance with Section 63J-1-504, impose a fee to recover the cost of certifying the place of public access as exempt under this section and enforce the provisions of this section.
 - (c) A local health department may impose a reasonable fee to cover the cost of verifying a place of public access complies with the provisions of Subsection (3) at the time of the application under Subsection (2)(a) and during the time of the exemption.
 - (d) Notwithstanding Section 26-38-8, if the department or a local health department determines that the place of public access has violated any provision of Subsection (3), the department may impose penalties in accordance with Section 26-23-6.
- (3)
 - (a) A place of public access must meet the following criteria to claim an exemption under this section:
 - (i) prior to January 1, 2012:
 - (A) the place of public access had and continues to have a class C or D liquor license;
 - (B) the place of public access sold a mixture of tobacco and other flavors for the purpose of heating, inhaling and exhaling the tobacco mixture through a hookah pipe in the place of public access; and
 - (C) the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the place of public access constituted at least 10% of the establishment's gross sales; and
 - (ii) during the period of the exemption under this section, the place of public access:
 - (A) shall maintain its class C or D liquor license;
 - (B) shall admit only individuals 21 years of age and older into the place of public access;
 - (C) shall prominently display signs on the premises and in advertisements that disclose the dangers of second hand smoke and inhaling tobacco in accordance with administrative rules adopted by the department;
 - (D) shall require that only tobacco products sold by the place of public access may be heated, inhaled, and exhaled in the place of public access; and
 - (E) may not sell a product for use in a hookah that contains more than 30% tobacco or more than .05% nicotine.
- (4) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the:

- (a) written information a facility shall include in a sign posted under Subsection (3)(a)(ii)(C) and in advertisements; and
 - (b) the size and number of signs that shall be posted in a facility.
- (5) This section sunsets in accordance with Section 63I-1-226.

Enacted by Chapter 171, 2012 General Session